IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5462 of 2007()

CRIME NO.269/2007 OF MUNAMBAM POLICE STATION

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PETITIONERS/ACCUSED

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1. ALBERT, AGED 32 YEARS,
   S/O JOSEPH, KALLOOR HOUSE,
   MUNAMBAM KARA, KUZHIPPALLY VILLAGE.

2. JOSEMON, AGED 28 YEARS, S/O ANTONY,
   MALIEKAL VEEDU,
   MUNAMBAM KARA, KUZHIPPILLY VILLAGE.

3. JENSON, AGED 28 YEARS, S/O JOSEPH,
   KALLOOR HOUSE, MUNAMBAM KARA,
   KUZHIPPILLY VILLAGE.

4. RAJESH, AGED 28 YEARS,
   S/O BAVA, PUTHENPURACKAL,
   MUNAMBAM KARA, KUZHIPPILLY VILLAGE.

BY ADV. SRI.P.T.SEBASTIAN TOMY

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, MUNAMBAM POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5462 of 2007

Dated this the 11th day of September 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1,3,4 and 5. Altogether there are five accused persons. Second accused had already been arrested and enlarged on bail. The petitioners face allegations under Section 326 I.P.C. The crux of the allegations is that the accused persons, five in number, went to the de facto complainant in two vehicles and unleashed an attack on the de facto complainant and his friends who tried to intervene. A dangerous weapon - idikkatta was used by the miscreants. One of the victims had suffered loss of teeth. An allegation is raised inter alia under Section 326 I.P.C. The petitioners apprehend imminent arrest. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. He prays that the petitioners may be granted anticipatory bail.

2. The learned Public Prosecutor opposes the application. All the available indications point unmistakably to the guilty of the accused persons under Section 326 I.P.C. There

are no circumstances justifying of warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor. This is a fit case where the petitioners must surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

3. I find merit in the opposition by the learned Public Prosecutor. I find no features in this case which would justify the invocation of the discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioners must surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007